

Recent developments in member state environmental law -

Czech Republic

Ilona Jancarova

- Changes related to the application of fertilizers to agricultural land was made in the Czech Republic based on the revision of the Nitrate Directive implementation (Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources) carried out by the representatives of the European Commission.
- A National forestry management program for the period to year 2013 was elaborated by updating the first National forestry management program that had been introduced in 2003. These programs are considered to be a tool of sustainable forest management. They are part of the state forestry policy. They are contributing to the EU forestry strategy fulfillment. The latest proposal of the National forestry management program was prepared by the Ministry of agriculture in collaboration with the Ministry of the Environment. The proposal was open to comments and discussed with the representatives of the forest land owners, entrepreneurs in forestry, NGOs, universities and scientific institutions, municipalities and nature protection authorities. The program proposal has been assessed by the environmental impact procedure.
- Based on the Water framework directive (2000/60/EC) river basin plans are being prepared in the Czech Republic. Governmental Resolution 1401/2005 set the requirement to assess the actual state of watercourses as fish areas and to prepare the draft of the governmental regulation (71/2003 Sb.) amendment based on the assessment of results with the aim to legally determine fish areas. The draft should be prepared by the end of 2009.
- In 2007, the amendment to the Air Act (86/2002 Sb.) was passed to implement the requirements of Directive 2003/30/ES related to biofuels. In 2008, another Amendment (No. 483/2008 Sb.) was passed related to the adaptation of Regulation 842/2006/EC, dealing with so called F-gasses contributing substantially to the global warming. However, the complex change of the Air Act was prepared and the draft of it should be passed to the government by the end of 2008. The draft deals, beside others, with fees in the field of air protection. Their regulation should be changed with respect to the realization of the 2. stage of the Ecological tax reform. The definition of VOCs should be amended as well because it does not include steam tension.
- At the beginning of 2008 the Waste Act (185/2001 Sb.) was amended to adapt to the EC Regulation 1013/2006 dealing with the transboundary movement of wastes and EC Regulation 850/2004 on persistent organic pollutants. The Directive 96/59/EC on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT) was transposed by this Amendment as well. The goal of another Amendment (383/2008 Sb.) is to prevent the theft of

mainly metal materials by setting stringent conditions for their collection. Based on the new Waste Framework Directive (Directive 2008/98/EC on waste) the amendment of the Waste Act (185/2001 Sb.) is under preparation. The basic issue is to harmonize definitions with the EC law and to set methods for application of criteria when the waste is losing the character of the waste. The amendment should solve the problem of the waste/no waste criteria and collection of products. The draft should be in compliance with the changes brought by the Waste Framework Directive.

- Because of the EC Regulation 1907/2006 (REACH), certain changes had to be made in the Act No. 356/2003 Sb., on chemical substances to enable its direct applicability. The amendment was passed at the end of 2008.
- The Nature Protection Act (114/1992 Sb.) was amended three times in 2008. The changes, however, do not have a substantial character.
- The Act No. 312/2008 Sb. substantially amended the Act No. 246/1992 Sb., on animal maltreatment. The Amendment is aimed at harmonization and adaptation of the EC law, mainly the Regulations 1/2005 on animal protection during transportation. Besides that, the Czech Act set new conditions of animal transportation for non-commercial purposes.
- A new PRTR Act was passed in 2008. The integrated pollution register was established by Act No. 76/2002 Sb. which was implemented by the governmental regulation No. 368/2003 Sb. The duty to report was carried out within Act No. 76/2002 Sb. and EC Regulation 166/2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC (Text with EEA relevance) (E-PRTR). The Czech Republic had to adapt national legislation to the changes brought by the EC legislation. The EC Regulation does not prevent member states to keep/introduce register with broader scope of polluting substances. Thus, in the Czech Republic, there are more stringent requirements as to the chemical substances in wastes and substances in emissions into the air. Because the Act No. 76/2002 Sb. was repealed by the Act No. 25/2008 Sb., on the integrated pollution register, more stringent requirements are anticipated to be contained in the governmental regulation implementing the new law.
- The amendment to the Environmental Impact Assessment Act was passed with the aim to simplify certain aspects of the procedure.
- At the end of 2007 the European Commission presented the proposal for a Directive on industrial emissions (COM (2007)844). The position of the industry towards the proposed changes is mostly critical due to the reduction of flexibility and the shifting of the position of BREFs in the permitting process. On the other hand, NGOs welcome this proposal. The Czech Republic considers the proposal to be reasonable, because insufficiencies of the IPPC Directive have influenced the implementation at the national level.
- The biggest change of the Czech environmental law system is represented by the Act No. 167/2008 Sb., on ecological damage prevention and remedy aimed at implementation of Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage. This Act has brought

changes into many Czech laws dealing mainly with the protection of all environmental components. In the Czech Republic, the ecological damage liability in general was already set by the Act No. 17/1992 Sb. By passing the new Act No. 167/2008 Sb. which deals with the ecological damage only within the scope of Directive 2004/35/EC, a rather complicated situation was created by the existence of general and special ecological damages.

- Most judicial decisions were related to the participation of the public in environmental protection and to the environmental impact assessment procedure. In the decision (1 As 13/2007) the Supreme Administrative Court concluded that the environmental impact statement according to the § 10 Act No. 100/2001 Sb., on the environmental impact assessment itself cannot be reviewed in the administrative judicial proceedings (by administrative court). In compliance with the Art. 9 of the Aarhus Convention and Art. 10a of the EC Directive 85/337/ECC the environmental impact statement can be reviewed only if the final decision on the projected activity which comes out of the environmental impact statement and other documents was appealed. The environmental impact statement is reviewed as a part of this appellate procedure.
- A similar problem was resolved in the decisions of the Supreme Administrative Court 1 As 39/2006-55 and 2 As 59/2005 - 136. The Administrative Court ruled that the environmental impact statements have the character of an expertise and as such they do not affect the duties and rights of individual persons and cannot be reviewed, but as a part of the final decision on the projected activity. The decision-making authority is not bound by this expertise, because the authority has to decide based on not only on the environmental impact statement, but other documents and proof. (Similarly also decision 1 As 39/20066-55)
- In the decision 3 As 38/2007- 81 Supreme Administrative Court ruled that the decision of the Ministry of the Environment on finding of significant/no significant impact on the environment cannot be reviewed.
- According to the decision 5 As 19/26 - 59, a non-governmental organization has access to justice to review administrative decisions only if all conditions set in the § 70 Act No. 114/1992 Sb.(on Nature Protection) and other laws are fulfilled.
- The Constitutional Court denied the constitutional complaint against the decision 2 As 12/2006 -111 of the Supreme Administrative Court according to which the applicant is the only participant in the permitting procedure according to the Act No. 18/1997 Sb., on atomic energy. NGOs are not participants according to the § 70 of the Nature Protection Act in this proceeding and they do not have access to court. It is considered to be in compliance with international obligations of the Czech Republic (Aarhus Convention)
- The decision of the Supreme Administrative Court No. 2 As 44/2007-112 was dealing with the waste incineration/energetic use of waste problem. In this case, the Court held that the shipment of waste from the MS to the Czech Republic has to be classified as the waste designated to energetic use (R1), based on 4 criteria fulfillment. To solve the discrepancy between R1 and D10 codes, it is also necessary to take the purpose of the waste importing facility into account.